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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,310	10/06/2000	Frank Elischweski	PM268418	9029

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EXAMINER

LEFFERS JR, GERALD G

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 09/24/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/680,310

Applicant(s)

ELISCHWESKI ET AL.

Examiner

Gerald G Leffers Jr.

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 August 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see Continuation sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☒ Newly proposed or amended claim(s) 40 and 43 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 29-34, 37-39, 41, 42 and 44-61.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 35-36, 40, 43.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

***Continuation Sheet/Advisory Action***

Continuation of 2: The proposed amendment to claims 35-36 raises new issues. For example, in claim 35, the phrase "overexpression is achieved by mutating a promoter or other regulatory element controlling coding sequences of a structural gene that prompts pantothenic acid production" raises new issues under 35 U.S.C. 112 1<sup>st</sup> paragraph for new matter and description, as well as for prior art.

Continuation of 5. does NOT place the application in condition for allowance because: Arguments directed to the amended claims are moot since the amendment has not been entered. However, if the amendment to claims 40 and 43 were entered, these claims would be allowable. With regard to claims 35-36, there still remains no explicit linkage between the limitations recited in the dependent claim and the overexpression of the panE gene, as recited in claim 30. For example, there is no explicit recitation that the expression cassette of claim 36 comprises additional copies of the panE gene. For claim 35, there is no direct linkage of a gene that "prompts" pantothenic acid production and amplification of the panE gene. Therefore, even if the amendment were entered, claims 35-36 would remain rejectable for reasons of record under 35 U.S.C. 112 2<sup>nd</sup> paragraph.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr. whose telephone number is (703) 308-6232. The examiner can normally be reached on 9:30am-6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (703) 305-1998. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7939 for regular communications and (703) 305-7939 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Gerald G Leffers Jr.  
Examiner  
Art Unit 1636

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September 11, 2002

DAVID GUZO  
PRIMARY EXAMINER  
*David Guzo*